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Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of taking any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

For purely methodological reasons the position of those delegations for whom global criteria should continue to apply is not reflected as a trend in this paper. For the same reasons the position of those delegations for whom the area adjacent to the territorial sea will become an exclusive economic zone or patrimonial sea and shall not be considered as high seas, is not reflected as a trend in this paper.

Item 17: Enclosed and semi-enclosed seas

PROVISION I

For the purpose of these articles:

- (a) the term "enclosed sea" shall refer to a small body of inland waters surrounded by two or more States which is connected to the open seas by a narrow outlet.
- (b) the term "semi-enclosed sea" shall refer to a sea basin located along the margins of the main ocean basins and enclosed by the land territories of two or more States.

PROVISION II

In regions with special characteristics, such as semi-enclosed or enclosed seas, where it is impossible for coastal States to fix the maximum breadth of their territorial seas, the breadth of the said seas shall be determined by agreement between the coastal States of the same region.

PROVISION III

Formula A

The general rules set out in chapters ... (chapters relating to territorial sea and economic zone) of this Convention shall be applied, in enclosed and semi-enclosed seas, in a manner consistent with equity.

States bordering enclosed and semi-enclosed seas may hold consultations among themselves with a view to determining the manner and method of application, appropriate for their region, for the purposes of this article.

Formula B

The general rules set out in this Convention shall apply to an enclosed or semi-enclosed sea in a manner consistent with the special characteristics of these seas and the needs and interests of their coastal States.

PROVISION IV

Management, conservation, exploration and exploitation of marine living resources in semi-enclosed seas beyond the territorial sea shall be undertaken by the riparian States in such areas through the regional arrangements, taking into account the activities of international organizations concerned in these fields.

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PROVISION V

Formula A

The preservation and protection of the marine environment of an enclosed or semi-enclosed sea and the management of its resources shall be the responsibility of the coastal States. To this end the coastal States may, in addition to global norms:

- (a) adopt regional rules and standards aimed at the better protection of their environment against marine pollution.
- (b) co-ordinate their activities in relation to the management and exploitation of the renewable resources of the enclosed or semi-enclosed sea under regional arrangements.

Formula B

In those areas, the preservation of the marine environment and the control of pollution shall be managed jointly among the riparian States. Rules, regulations and standards for this purpose shall be based on internationally agreed standards. Due consideration shall be given to the work done by the competent international organizations in this regard.

PROVISION VI

Scientific research in an enclosed or semi-enclosed sea shall be conducted only with the consent of the coastal States concerned.

PROVISION VII

Formula A

1. Merchant ships and government ships operated for commercial purposes which are proceeding to or from a coastal State bordering a semi-enclosed sea whose access to ocean space lies exclusively through straits connecting two parts of the high seas and traditionally used for international navigation shall enjoy the right of free transit for this purpose.

2. The régime of passage provided for in this article shall, however, be applied in accordance with the following provisions:

(a) During passage, ships shall observe all international regulations concerning the prevention of collisions and shall accordingly comply with such traffic separation schemes as may derive from this Convention or from recommendations by IMCO.

(b) Ships shall likewise take all preventive measures necessary to avoid causing any damage to the coastal States bordering the straits.

(c) Damage caused to the coastal State as a result of the exercise by a ship of the right of passage under the régime of free transit shall entitle that State to claim compensation.

(d) No State shall be entitled to interrupt or suspend free transit through straits or to take any measures likely to hamper such transit.

3. The provisions of this article:

(a) Apply only to straits which connect two parts of the high seas and which are traditionally used for international navigation;

(b) Do not apply to straits already regulated by international conventions.

4. Warships and government ships operated for non-commercial purposes which are passing through straits under the conditions provided for in paragraph 1, shall enjoy the right of innocent passage.

5. The régime of innocent passage must be established in such a way as to safeguard the legitimate rights and interests of coastal States with regard, inter alia, to national security and safety of navigation.

Formula B

1. The provisions of this article apply only to straits which connect two parts of the high seas and which are customarily used for international navigation.

2. Ships of all States shall enjoy freedom of navigation in straits connecting two parts of the high seas, whether they are open seas or semi-enclosed seas.

Formula C

(See Provision IV, Formula C; Provision V, Formula B; Provision VI, Formula B; Provision VII, Formula B; Provision VIII; Provision X, Formula B; Provision XII and Provision XIII, Formula A in Informal Working Paper No. 2/Rev.1).

PROVISION VIII

Where the establishment of a 12-mile territorial sea in semi-enclosed sea, which constitutes part of the high seas, has the effect of enclosing as territorial sea areas previously considered as part of the high seas, freedom of navigation shall exist in those waters.
